

SERVED: August 25, 1992

NTSB Order No. EA-3645

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 11th day of August, 1992

_____)	
THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-10692
v.)	
)	
LEIGH R. PRATT,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Both the respondent and the Administrator have appealed from the initial decision of Administrative Law Judge William R. Mullins, issued in this proceeding on April 19, 1990, at the conclusion of an evidentiary hearing.¹ By that decision the law judge affirmed that part of the Administrator's order which alleged that respondent violated Section 91.9 of the Federal

¹An excerpt from the hearing transcript containing the initial decision is attached.

Aviation Regulations (FAR), 14 C.F.R. Part 91,² by carelessly operating civil aircraft N712PC, a Boeing 707, during a landing approach in such a manner as to allow the number one (left outbound) engine to strike the runway. The law judge modified the Administrator's order by reducing the sanction from a 60 day suspension of respondent's Airline Transport Pilot (ATP) certificate to a 30 day suspension. For the reasons that follow, we grant the Administrator's appeal and deny that of respondent.

In response to the Administrator's order, which was filed as the complaint in this matter, respondent filed an answer in which he admitted all of the factual allegations but denied that his operation of N712PC was careless in violation of FAR section 91.9. The parties apparently agreed prior to the hearing that, as a result of respondent's admissions, the burden of going forward shifted to him to produce an alternative explanation for the event sufficient to overcome the Administrator's claim of carelessness.³

²FAR section 91.9 provided at the time of the incident as follows:

"§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³Under the Lindstam doctrine, Administrator v. Lindstam, 41 C.A.B. 841 (1964), the Administrator need not allege or prove specific acts of carelessness to support a violation of section 91.9. Instead, using circumstantial evidence, he may establish a prima facie case by creating a reasonable inference that the incident would not have occurred but for carelessness on respondent's part. The burden then shifts to respondent to come forward with an alternative explanation for the event sufficient to overcome the inference of carelessness.

According to respondent's testimony before the law judge, prior to departure, repairs had been made to a pilot steering computer which provides directional guidance through the aircraft's course deviation indicator ("CDI"). During the subject approach he claims that his First Officer carefully monitored the CDI, which indicated that the plane was aligned with the centerline of the runway. Respondent acquired the runway visually at approximately 250 feet above ground level ("AGL"). Respondent testified that the decision height (i.e., the point at which the decision to either land or abort must be made) for that approach is 200 feet AGL, and it was then that he realized that he was in fact aligned with the left-hand runway lights, slightly left of the centerline. Rather than aborting the landing, respondent decided to make an adjustment to the aircraft as he landed. However, the aircraft landed hard and bounced. In order to counteract bouncing too far to the right, respondent corrected to the right, and back to the left. As he dropped the wing, he claims that the force of the hard landing caused his left hand (his right hand was on the throttles) to inadvertently push down on the left side of the control wheel, which resulted in the number one engine striking the runway. On cross-examination respondent admitted if he had gone around, he would have prevented the incident from occurring. (TR-19.)

Following respondent's testimony, the Administrator moved for summary judgment. The law judge, rather than ruling on the motion, found that the evidence was sufficient to sustain the

allegation contained in the Administrator's order. (TR-25.)

Respondent asserts on appeal that the law judge erred in sustaining the Administrator's order. He contends that once he went forward with his explanation of the event, it was incumbent on the Administrator to rebut his explanation. We disagree. As the Board noted in Administrator v. Ewert, NTSB Order No. EA-3522 at 6 (1992), citing Administrator v. Sanders, 4 NTSB 1062, 1064 (1983), "[o]nly after a respondent establishes that his alternate explanation of the cause of an accident is reasonable, does the burden shift back to the Administrator." We agree with the law judge's implicit finding that respondent's explanation, that the reason he struck the runway with his engine was because of the hard landing, does not reasonably explain the cause of this incident. Instead, it was respondent's exercise of deficient judgment in deciding to continue the approach despite not being aligned with the centerline, rather than aborting the landing when he still could have, which was the cause of this incident and which supports the finding of a violation of section 91.9. Even respondent admitted on cross-examination that the incident could have been avoided had he simply gone around. In light of this testimony, there remained nothing for the Administrator to rebut.

Having affirmed the finding of a violation of section 91.9, the law judge nonetheless reduced the sanction to a 30 day suspension, stating only his belief that the 60 days ordered by the Administrator was not justified by the evidence. On appeal,

the Administrator asserts that the reduction was erroneous, as it was supported by neither clear nor compelling reasons.

Respondent argues in reply that even though the law judge cites neither policy nor precedent in support of his reduction, he is in a better position than the Administrator to determine an appropriate sanction. Respondent recognizes that his argument is contrary to Board precedent, see Administrator v. Muzquiz, 2 NTSB 1474 (1975), but urges the Board to overturn Muzquiz and its progeny. We decline to do so. The sanction selected by the Administrator in the instant case was consistent with Board precedent, see, e.g., Administrator v. Wells, 1 NTSB 1489 (1971), and is affirmed.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. Respondent's appeal is denied;
3. The initial decision is modified and the Administrator's order is affirmed in its entirety; and
4. The 60-day suspension of respondent's airline transport pilot certificate shall begin 30 days from the date of service of this order.⁴

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁴For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).